mortgagor and his privies in title, in the absence of evidence to show that the recitals are untrue. Naugher *v.* Sparks, supra; Hughes *v.* Rose, 163 Ala. 368, 50 South. 899; Smith *v.* Steiner, 172 Ala. 79, 55 South. 606; Clark *v.* Johnson, 155 Ala. 648, 47 South. 82; Jackson *v.* Tribble, 156 Ala. 480, 47 South. 810. The term privity,' or 'privies,' as here used, means mutual or successive relationship to the same right of property; for example, the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor. McDonald & Co. *v.* Gregory, 41 Iowa, 513, 516; Coke Litt. 241a, 242a; Whittingham's Case, 4 Coke's Rep. (pt. 8) p. 42.

"The case of Speakman *v.* Vest, 166 Ala. 235, 51 South. 980, is not to the contrary. The question there considered was whether the personal property involved was seized and sold without complying with the terms of sale; and it was held that the evidence introduced without objection by the attorney in fact who represented the mortgagee, in foreclosing the mortgage, tended to show that notice of sale was given as required by the mortgage, and that as to the fact of foreclosure a jury question was presented."

Good Will—Right of Vendor to Solicit Trade by Advertisement or Otherwise.—In Hilton *v.* Hilton 104 Atl. 375, the Court of Errors and Appeals of New Jersey held that the vendor of the good will of a business who has not covenanted or agreed not to compete, may seek for trade by any honest method, including public advertisement, or private advertisement among those who were not customers of the old business, but may not specially solicit the trade of those who were customers of the old business, and he may serve all who come of their own motion.

The court said: "'The vendor of a "good will" who has not expressly restricted himself against carrying on the business, being permitted by law to carry on a rival business wherever he chooses, may push his business as any stranger or outsider might, even though this does interfere with the business he has sold, and the real question, therefore, is narrowed down to this: In thus pushing his rival business, what acts, if any, must the vendor be restrained from?'

"It was always conceded that the vendor in conducting the rival business might make his business known by the usual general appeals by public advertisement to the public generally. Johnson *v.* Helleley, 2 DeG. J. & S. 446, 34 L. J. Ch. 179; Hall *v.* Barrows, 33 L. J. Ch. 204; Labouchere *v.* Dawson, 41 L. J. Ch. 427. It was at one time contended that the vendor might go farther, and solicit personally or by mail, by traveling men, or any other way. It was finally settled that such special solicitation would be restrained.

The English cases are set forth by Vice Chancellor Emery in Newark Coal Co. *v.* Spangler, above cited, and the matter has been put at rest by the decision of this court in Snyder Pasteurized Milk Co. *v.* Burton, 80 N. J. Eq. 185, 83 Atl. 907. We there said:

" 'The defendant, having made no express covenant, may engage in a competing business.'

"We there restrained the defendant from soliciting customers of the former business, the good will of which he had sold. It is gratifying to know that the English rule adopted by us has the support not only of reason but of the weight of authority in other jurisdictions. The more recent cases are collected in a note to Von Bremen *v.* MacMonnies, 200 N. Y. 41, 93 N. E. 186, 32 L. R. A. (N. S.) 293, in 21 Ann. Cas. 423. The New York Court of Appeals holds to our rule. The Supreme Court of Massachusetts takes a different view. Cases are collected in a note to Foss *v.* Roby, 195 Mass. 292, 81 N. E. 199, 10 L. R. A. (N. S.) 1200, in 11 Ann. Cas. 571, but the cases cited in that note show that the great weight of authority is with our rule. On the one hand, then, the vendor, having the right to conduct a rival business, may, from the necessity of the case, seek for trade by any honest method, including public advertisement or private advertisement among those who were not customers of the old business, but he may not specially solicit the trade of those who were customers of the old business. The question still remains whether he may deal with the old customers, who may perhaps be attracted by their knowledge, from advertisement or otherwise, that he is in business. This question was left in doubt by what Justice Dixon said in Richardson *v.* Peacock., Sir George Jessel, in Ginesi *v.* Cooper, L. R. 14, Ch. Div. 596, 49 L. J. Ch. 601, enjoined a vendor who had sold his good will from dealing with the old customers, and vindicated his action in his usual vigorous style. Afterwards, in Leggett *v.* Barrett, L. R. 15 Ch. Div. 306, 51 L. J. Ch. 90, an injunction granted by him in accordance with Ginesi *v.* Cooper came before the Court of Appeals, and his order was reversed. Brett, L. J., said:

" 'The truth is, that to enjoin a man, or to prevent him by means of damages when he does it, against dealing with people whom he has not solicited is not only to enjoin him, but to enjoin them, for it prevents them from having the liberty which everybody in the country might have of dealing with whom they like. If they are induced by his solicitations, that is a different thing; but it seems to me that it would be quite wrong to imply any contract that he will not deal with people who come of their own accord to deal, even though they were former customers.'

"The judges agreed that there was no authority for the extension of the relief attempted by the Master of the Rolls. The argument is unanswerable. It cannot be that every customer of a great de-

partment store, for instance, must be restricted in his choice of a place in which to trade merely because partners dissolve and one sells the good will to the other. The necessary corollary of the right to do business is the right to serve all who come of their own motion. Moreover, the rules of law must be practical, and it would be quite impossible for the proprietor even of a small business to be personally present in parts of his establishment, prepared to turn away all the old customers, and of course no clerk can be supposed to know them, even if the proprietor can be.

"The right to make known that one is in business by advertising addressed to the public generally is a necessary concomitant of the right to do business, without which that right would be hardly more than nominal. The reason for making a difference between such advertising and special solicitation is that the former is public and open to all; the latter is private and secret in a sense, and the vendor of good will has the advantage of knowing the customers, and, if permitted, could by reason of that knowledge, detract from the value of the good will he had sold.

"No relief is open to the complainant, by reason of his purchase of good will, except an injunction against soliciting customers of the old business."

Injunctions—Municipal Corporations—Right to Prohibit Undertaking Establishment on Residence Street.—In Osborn *v.* City of Shreveport, 79 So. 542 the supreme court of Louisiana held that the authority conferred upon a municipal corporation to prevent and prohibit the location, construction, or maintenance of all buildings and all establishments where any nauseous or unwholesome business may be carried on, and to restrict the same within certain limits, includes the authority to prohibit the establishment and maintenance of an undertaking business on a residential street where such business has not therefore been conducted; and that, in the absence of any prohibitive ordinance, an undertaker may be prevented, agreeably to the maxim, "Sic utere tuo ut alienum non lædas," from establishing his business among residences where such business has not theretofore been conducted.

The court said: "The courts, we think, may safely take it for granted that, with rare exceptions, civilized human beings are in a greater or less degree made uncomfortable by foul odors, and by none more so than by those emitted from a badly decomposed human body. It may be that bad cases are infrequent in plaintiff's establishment, and that the stench emitted by them is 'brought under control' as rapidly as possible; but a single experience of air so laden would, as we imagine, more than satisfy the average individual for the period of his natural life, and 15 minutes would be quite long enough for the experience. We find no reason to doubt